

PATENT
454313-2335.1**REMARKS**

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments, remarks and attachment(s) herewith, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 12-39 remain pending, with the specification amended merely for clarification, as above-noted. No new matter is added.

Any fee occasioned by the new claims herein or any overpayment in such a fee, may be charged or credited to Deposit Account No. 50-0320.

In addition, the Examiner is thanked for indicating that original claims 18 and 19 are allowable.

**II. THE RESTRICTION REQUIREMENT IS IMPROPER
AND ITS WITHDRAWAL IS REQUESTED OR PETITIONED**

Claims 14, 27, and 36-38 have been subject to restriction, i.e., they were withdrawn from consideration. The basis stated in the Office Action is "the numerous pathogens recited in claim 14 is distinct from the original recited PCV." It is respectfully submitted that this makes no sense.

Firstly, claim 14 provides the chemical structure that includes carbomer recited in claim 13; and thus, claim 14 and the claim dependent thereon (claim 36) should have been examined with claim 13; and, are allowable in the same fashion that claim 13 is allowable (as discussed below). Accordingly, in view of the search and examination of claim 13, claims 14 and 36 should also have been considered to have been searched and examined therewith as the search and examination of claims 13, 14 and 36 is co-extensive and does not require impose any undue or serious burden on the Examiner (the search and examination of claim 13 was a search and examination of the subject matter of claims 13, 14 and 36).

Secondly, as to claims 27 and 38, these claims depend upon already-examined claim 20, which calls for a claim 12, 13 or 14 preparation further comprising a plasmid encoding and expressing an immunogen from a porcine pathogenic agent other than PCV-2 or PCV-1. The claims of Allan et al., U.S. Patent No. 6,217,883 (cited in the Office Action), e.g., claim 25 of Allan et al., shows that there is no undue or serious burden on the Examiner in searching and examining the subject matter of claims 27 and 38 in the present application. Accordingly, in

PATENT
454313-2335.1

view of the search and examination of claim 20, claims 27 and 38 should also have been considered searched and examined; the search and examination of claim 20 was co-extensive with a search and examination of claims 27 and 38 (the search and examination of claim 20 was a search and examination of the subject matter of claims 20, 27 and 38).

And thirdly, claim 37 depends on claim 18. Claim 18 was already searched and examined. There was no undue or serious burden on the Examiner in also searching and examining claim 37 with the search and examination of claim 18. And, the search and examination of claim 18 included a search and examination of the claim 37 subject matter, i.e., the search and examination of claim 18 was a search and examination of the subject matter of claim 37.

Therefore, the subject matter of claims 14, 27, and 36-38 has already been searched and examined in the search and examination of the subject matter of claims 12, 13, 15-26, 28-35, 37 and 39; and there was no undue or serious burden on the Examiner in including the subject matter of claims 14, 27, and 36-37 in the subject matter searched and examined. Ergo, there is no basis for withdrawing claims 14, 27 and 36-38 from consideration; and, it is respectfully requested that the restriction of claims 14, 27, and 36-38 be reconsidered and withdrawn. To any extent a Petition is needed for the herein requested relief, i.e., for claims 14, 27, and 36-38 to be under current examination, this paper is to serve as such a Petition; and, any fee for this Petition may be charged, or overpayment credited, to Deposit Account No. 50-0320. (Thus, to any extent necessary, this paper is a Petition to Withdraw the Restriction Requirement at page 2 of the Office Action.)

III. THE PRIORITY ISSUE AND ART REJECTIONS ARE OVERCOME

The Office Action, at page 2, raises a priority issue. As discussed above, the herein Request For Correction of Filing Receipt and the herein specification amendment, clarify the priority issue. The present application claims priority from US provisional application 60/138,352, filed June 10, 1999.

Claims were rejected in the Office Action under Section 103 based on Allan et al., U.S. Patent No. 6,217,883, in view of Eppstein, U.S. Patent No. 4,946,787, or Neurath et al., U.S. Patent No. 6,165,493 or Dubensky, Jr., U.S. Patent No. 6,015,694.

All of these Section 103 rejections shall be addressed collectively because without needing to specifically or generally address anything stated in the Office Action (i.e., there is no

PATENT
454313-2335.1

admission as to anything stated in the Office Action and the assertions of obviousness are generally and specifically denied and disagreed with), all of the rejections fall based on one simple fact: **Allan et al., the primary reference in all of the Section 103 rejections, IS NOT PRIOR ART.**

More specifically, **the present application claims priority to USSN 60/138,352, filed June 10, 1999.**

Allan et al. issued from USSN 09/347,594, filed July 1, 1999. Allan et al. is only available (via Section 102(e)) against applications filed on or after July 2, 1999. Allan et al. is not available against the present application. **The present application has an effective filing date of June 10, 1999; an effective filing date prior to the US filing date of Allan et al. Ergo, Allan et al. is not prior art as to the present application.**

Accordingly, while there is general and specific disagreement with and denial of the assertions of obviousness set forth in the Office Action, the Section 103 rejections also fail in view of the simple fact that Allan et al. is not prior art as to the present application.

Therefore, reconsideration and withdrawal of the Section 103 rejections are respectfully requested.

REQUEST FOR INTERVIEW

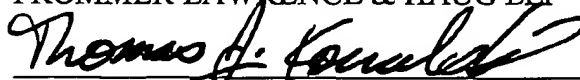
If any issue remains as an impediment to allowance, prior to any paper issuing other than a Notice of Allowance, an interview is respectfully requested with the Examiner and her Primary, Deborah Crouch; and, the Examiner is further respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for the interview.

CONCLUSION

In view of these amendments, remarks and attachment(s) herewith, the application is in condition for allowance. Early and favorable reconsideration of the application, reconsideration and withdrawal of the objections to and/or rejections of the application, and prompt issuance of a Notice of Allowance, or an interview at an early date, are earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:



Thomas J. Kowalski, Reg. No. 32,147
Tel (212) 588-0800, Fax (212) 588-0500
Email TKowalski@FLHLaw.com

PATENT
454313-2335.1**Appendix: Marked-Up Version To Show Changes Made****IN THE SPECIFICATION**

Please amend the specification, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents, as follows:

Page 1, first paragraph, and heading therefor, please rewrite the text thereat to read as follows:

[CROSS-REFERENCE TO] RELATED APPLICATIONS:

[Reference is made to US Applications Serial Nos. 60/138,352, filed June 10, 1999, 09/082,558, filed 21 May 1998 and to US Application Serial 09/161,092 filed on 25 September 1998 in the form of a continuation-in-part of application Serial 09/082,558; these applications being incorporated herein by way of reference, and each document cited in the present application also incorporated herein by way of reference. (Reference is made to U.S. applications Serial Nos. 60/138,352, filed June 10, 1999, 09/161,092, filed 09/25/98 as a CIP of U.S. application Serial No. 09/082,558, filed 05/21/98, claiming priority from French Application Nos. 97/12382, 98/00873, 98/03707, filed 10/03/97, 1/22/98, 3/20/98; each of which, and each document cited therein, incorporated herein by reference).] This application is based on and claims priority from U.S. application Serial No. 60/138,352, filed June 10, 1999. Mention is made of U.S. application Serial No. 09/082,558, filed 21 May 1998, U.S. application Serial No. 09/161,092, filed on 25 September 1998, and French Application Nos. 97/12382, 98/00873, 98/03707, filed October 3, 1997, January 22, 1998, and March 20, 1998. Each of these applications, and each document cited therein, is hereby incorporated herein by reference; and each document cited in the present application is also incorporated herein by way of reference.